

REMARKS

Applicants have thoroughly considered the Examiner's remarks in the October 29, 2009 Office action. No new matter has been added. Reconsideration of the application in view of the following remarks is respectfully requested.

Applicants acknowledge the Office's withdrawal of the Thomas references (US Patents 6,901,415 and 6,952,708) as invalid §103(a) prior art in light of Applicants' Response to Final Office Action filed September 14, 2009.

Claim Rejections Under 35 U.S.C. §103

Claims 1-21 and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Reed et al. (US 2002/0095454) in view of Lemke (US 2005/0086306) and further in view of Border et al. (US 2002/0071436). Applicants respectfully submit that none of the cited references, alone or in combination, renders these claims unpatentable.

Reed teaches a system for transferring data, metadata and methods from a provider computer to a consumer computer through a communications network. Border discloses a system for a proxy architecture. As correctly stated by the Examiner, neither Reed nor Border, separately or together, disclose every feature set forth in the claims. For example, the Examiner acknowledges that Reed fails to explicitly disclose "setting the tracking GUID equal to the syncGUID and wherein said timeout being used to determine the maximum time between sync notifications and current time is greater than or is less than a timeout" and cites Lemke with respect to this feature. (Paragraphs 5-6, pages 4-5 of October 29, 2009 Office Action).

Applicants submit that in light of the pending claims, the current 35 U.S.C. §103 rejection based in part on Lemke is improper for the following reasons:

1. Improper Prior Art

Lemke is not prior art. **Lemke has a filing date of March 14, 2003.** In the previous response (filed by Applicants on September 14, 2009), Applicants submitted a §1.131 Declaration **establishing an invention date no later than January 2, 2003 for the instant application.** The Declaration proved effective in removing the previously

relied upon Thomas references based on the Office's new basis for rejecting the instant claims. Because the Lemke reference likewise has an effective filing date later than January 2, 2003, it does not qualify as prior art and, thus, cannot be used as a basis of rejection of the pending claims.

2. Removal of Lemke in Previous Office Actions

Applicants submit that in view of the prosecution history of the instant application, Lemke does not disclose the claimed features mentioned above.

The Office applied Reed/Border/Lemke in the first Office Action (dated June 29, 2007) as well as the second Office Action (dated February 20, 2008). Applicants' representative conducted an interview with Examiner Cheema on August 25, 2008 during which Applicants' representative discussed the differences between the claims as presented in Amendment B (filed April 11, 2008) and the cited art. In the Office Action (dated September 10, 2008) immediately following the interview, the Office removed Lemke and introduced Thomas (US 2003/0004917) in its place. The new grounds of rejection presented in the September 10, 2008 Office Action clearly indicate that the Office agreed that the combination of Reed/Border/Lemke did not disclose the claimed features as previously argued by the Office.

In the Final Office Action (dated April 15, 2009), the Office cited Reed/Thomas/Border/Thomas in rejecting the claims as presented in Amendment C (filed December 18, 2008). By framing the rejection as it did, the Office provided a clear indication that Lemke was still not applicable. Applicants then filed a Declaration pursuant to §1.131 and a Response without further claim amendments. As explained above, the Declaration established an invention date no later than January 2, 2003, which rendered the Thomas references unusable as §103(a) prior art.

Since no further amendments have been made, and since the prosecution history of the present application clearly indicates that the Office does not consider Lemke to cure the deficiencies of the other cited references, it is contradictory and improper for Lemke to be cited again for rejecting the pending claims.

In summary, **Lemke is not prior art. Even if Lemke is considered prior art, the pending claims are already distinguishable over Lemke based on the present application's prosecution history, in which the Office removed Lemke as a basis for rejecting the claims.**

Applicants submit that since no further amendments have been made, no additional searching is required and the claims are allowable over the art of record for at least the reasons discussed above. Due to the improper rejection, Applicants further request that the next Office Action, if any, be made non-final.

Inasmuch as the rejection based on Lemke is improper and the Office acknowledges that the combination of Reed/Border does not disclose substantial aspects of the pending claims, Applicants request that the 35 U.S.C. §103 rejection of claims 1-21 and 24 be withdrawn.

Conclusion

Applicants submit that the claims are allowable for at least the reasons set forth herein. Applicants thus respectfully submit that claims 1-21 and 24 as previously filed are in condition for allowance and respectfully request favorable reconsideration of this application.

Although the art made of record and not relied upon may be considered pertinent to the disclosure, none of these references anticipates or makes obvious the recited claims. The fact that Applicants may not have specifically traversed any particular assertion by the Office should not be construed as indicating Applicants' agreement therewith.

Applicants wish to expedite prosecution of this application. If the Examiner deems the application to not be in condition for allowance, the Examiner is invited and encouraged to telephone the undersigned to discuss making an Examiner's amendment to place the application in condition for allowance.

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment of any required fee during the entire pendency of this application to Deposit Account No. 19-1345.

Respectfully submitted,

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